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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

IN THE HOUSE OF REPRESENTATIVES

Mr. MURPHY introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Campus Free Speech
3 Restoration Act”.

4 **SEC. 2. PROTECTION OF STUDENT SPEECH AND ASSOCIA-**
5 **TION RIGHTS.**

6 Section 112(a) of the Higher Education Act of 1965
7 (20 U.S.C. 1011a(a)) is amended—

8 (1) by redesignating paragraph (2) as para-
9 graph (3); and

10 (2) by inserting after paragraph (1) the fol-
11 lowing:

12 “(2) It is the sense of Congress that—

13 “(A) every individual should be free to profess,
14 and to maintain, the opinion of such individual in
15 matters of religion or philosophy, and that pro-
16 fessing or maintaining such opinion should in no
17 way diminish, enlarge, or affect the civil liberties or
18 rights of such individual on the campus of an insti-
19 tution of higher education;

20 “(B) no public institution of higher education
21 directly or indirectly receiving financial assistance
22 under this Act should limit religious expression, free
23 expression, or any other rights provided under the
24 First Amendment to the Constitution of the United
25 States;

1 “(C) free speech zones and restrictive speech
2 codes are inherently at odds with the freedom of
3 speech guaranteed by the First Amendment to the
4 Constitution of the United States;

5 “(D) bias reporting systems are susceptible to
6 abuses that may put them at odds with the freedom
7 of speech guaranteed by the First Amendment to the
8 Constitution of the United States; and

9 “(E) no public institution of higher education
10 directly or indirectly receiving financial assistance
11 under this Act should restrict the speech of such in-
12 stitution’s students through improperly restrictive
13 zones, codes, or bias reporting systems.”.

14 **SEC. 3. CAMPUS SPEECH POLICIES AT INSTITUTIONS OF**
15 **HIGHER EDUCATION.**

16 Title IV of the Higher Education Act of 1965 (20
17 U.S.C. 1070 et seq.) is amended—

18 (1) in section 487(a), by adding at the end the
19 following:

20 “(30)(A) In the case of a public institution
21 (other than an institution described in section
22 494A(b)(4)), the institution will comply with the ex-
23 pressive activity protections described in section
24 494A.

1 “(B) In the case of a private institution (other
2 than an institution described in section 494B(e)),
3 the institution will comply with the expressive activ-
4 ity requirements described in section 494B.”; and

5 (2) in part G, by adding at the end the fol-
6 lowing:

7 **“SEC. 494A. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**
8 **SITIES.**

9 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

10 “(1) IN GENERAL.—In this section, the term
11 ‘expressive activity’ includes—

12 “(A) peacefully assembling, protesting,
13 speaking, or listening;

14 “(B) distributing literature;

15 “(C) carrying a sign;

16 “(D) circulating a petition; or

17 “(E) other expressive rights guaranteed
18 under the First Amendment to the Constitution
19 of the United States, including religious rights.

20 “(2) EXCLUSIONS.—In this section, the term
21 ‘expressive activity’ does not include unprotected
22 speech (as defined by the precedents of the Supreme
23 Court of the United States).

24 “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

1 “(1) IN GENERAL.—Each public institution of
2 higher education participating in a program under
3 this title may not prohibit, subject to paragraph (2),
4 a person from freely engaging in noncommercial ex-
5 pressive activity in a generally accessible area on the
6 institution’s campus if the person’s conduct is law-
7 ful.

8 “(2) RESTRICTIONS.—An institution of higher
9 education described in paragraph (1) may not main-
10 tain or enforce time, place, or manner restrictions on
11 an expressive activity in a generally accessible area
12 of the institution’s campus unless the restriction—

13 “(A) is necessary to achieve a compelling
14 governmental interest;

15 “(B) is the least restrictive means of fur-
16 thering that compelling governmental interest;

17 “(C) is based on published, content-neu-
18 tral, and viewpoint-neutral criteria;

19 “(D) leaves open ample alternative chan-
20 nels for communication; and

21 “(E) provides for spontaneous assembly
22 and distribution of literature.

23 “(3) APPLICATION.—The protections provided
24 under paragraph (1) do not apply to expressive ac-

1 tivity in an area on an institution’s campus that is
2 not a generally accessible area.

3 “(4) NONAPPLICATION TO SERVICE ACAD-
4 EMIES.—This section shall not apply to an institu-
5 tion of higher education whose primary purpose is
6 the training of individuals for the military services
7 of the United States, or the merchant marine.

8 “(c) CAUSES OF ACTION.—

9 “(1) AUTHORIZATION.—The following persons
10 may bring an action in a Federal court of competent
11 jurisdiction to enjoin a violation of subsection (b) or
12 to recover compensatory damages, reasonable court
13 costs, or reasonable attorney fees:

14 “(A) The Attorney General.

15 “(B) A person claiming that the person’s
16 expressive activity rights, as described in sub-
17 section (b)(1), were violated.

18 “(2) ACTIONS.—Notwithstanding any other
19 provision of law, in an action brought under this sec-
20 tion, the Federal court shall decide de novo all rel-
21 evant questions of fact and law, including the inter-
22 pretation of constitutional, statutory, and regulatory
23 provisions, unless the parties stipulate otherwise. In
24 an action brought under this subsection, if the court
25 finds a violation of subsection (b), the court—

1 “(A) shall—

2 “(i) enjoin the violation; and

3 “(ii) if a person whose expressive ac-
4 tivity rights were violated brought the ac-
5 tion, award the person—

6 “(I) not less than \$500 for an
7 initial violation; and

8 “(II) if the person notifies the in-
9 stitution of the violation, \$50 for each
10 day the violation continues after the
11 notification if the institution did not
12 act to discontinue the cause of the
13 violation; and

14 “(B) may award a prevailing plaintiff—

15 “(i) compensatory damages;

16 “(ii) reasonable court costs; or

17 “(iii) reasonable attorney fees.

18 “(3) BASIS FOR ENACTMENT.—This subsection
19 is enacted as an exercise of the enforcement power
20 of the Congress under section 5 of the Fourteenth
21 Amendment to the Constitution to protect expressive
22 activities.

23 “(d) STATUTE OF LIMITATIONS.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (3), an action under subsection (c) may not

1 be brought later than 1 year after the date of the
2 violation.

3 “(2) CONTINUING VIOLATION.—Each day that
4 a violation of subsection (b) continues after an ini-
5 tial violation of subsection (b), and each day that an
6 institution’s policy in violation of subsection (b) re-
7 mains in effect, shall constitute a continuing viola-
8 tion of subsection (b).

9 “(3) EXTENSION.—For a continuing violation
10 described in paragraph (2), the limitation described
11 in paragraph (1) shall extend to 1 year after the
12 date on which the most recent violation occurs.

13 “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

14 “(1) NO ELIGIBILITY FOR FUNDS.—

15 “(A) IN GENERAL.—No public institution
16 of higher education shall be eligible to receive
17 funds under this Act, including participation in
18 any program under this title, if the Secretary
19 determines that the institution—

20 “(i) maintains a policy that infringes
21 upon the expressive rights of students
22 under the First Amendment to the Con-
23 stitution of the United States; or

24 “(ii) maintains or enforces time,
25 place, or manner restrictions on an expres-

1 sive activity in a generally accessible area
2 of the institution's campus that do not
3 comply with subparagraphs (A) through
4 (E) of subsection (b)(2).

5 “(B) PROHIBITION.—The Secretary may
6 not conduct an investigation for purposes of
7 making a determination under subparagraph
8 (A) with respect to an institution of higher edu-
9 cation, unless such an investigation is con-
10 ducted under paragraph (4) with respect to a
11 complaint received under paragraph (2).

12 “(C) COURT REVIEW.—Notwithstanding
13 any other provision of law, the Secretary's de-
14 terminations under this subsection shall be re-
15 viewed de novo with respect to all relevant ques-
16 tions of fact and law, including the interpreta-
17 tion of constitutional, statutory, and regulatory
18 provisions, unless the parties stipulate other-
19 wise.

20 “(2) DESIGNATION OF AN EMPLOYEE TO RE-
21 CEIVE COMPLAINTS.—The Secretary shall designate
22 an employee in the Office of Postsecondary Edu-
23 cation of the Department to receive complaints
24 (whether electronically or by mail) from students or
25 student organizations at a given public institution of

1 higher education, or from any other person or orga-
2 nization, regarding policies at the institution that
3 meet the description of clause (i) or (ii) of para-
4 graph (1)(A).

5 “(3) COMPLAINT.—A complaint submitted
6 under subparagraph (2)—

7 “(A) shall include the provision of the in-
8 stitution’s policy the complainant believes meets
9 the description of clause (i) or (ii) of paragraph
10 (1)(A), along with any evidence regarding the
11 operation and enforcement of such policy the
12 complainant deems relevant; and

13 “(B) may include an argument and any
14 other supplemental information as to why the
15 policy in question meets such description.

16 “(4) SYSTEM OF REVIEW.—

17 “(A) FIRST STAGE REVIEW.—

18 “(i) REQUEST FOR RESPONSE.—Not
19 later than 7 days after the date of receipt
20 of a complaint under paragraph (2), the
21 Secretary shall review the complaint and
22 request a response to the complaint from
23 the institution.

24 “(ii) INSTITUTION RESPONSE.—Not
25 later than 30 days after the date the Sec-

1 retary requests a response under clause (i),
2 the institution shall—

3 “(I) certify to the Secretary that
4 the institution has entirely withdrawn
5 the policy that occasioned the com-
6 plaint;

7 “(II) submit a revised policy for
8 review by the Secretary; or

9 “(III) submit a defense of the
10 policy that occasioned the complaint.

11 “(iii) AVAILABILITY TO COMPLAIN-
12 ANT.—

13 “(I) IN GENERAL.—Not later
14 than 7 days after the date of receipt
15 of a revised policy or defense of the
16 original policy as submitted by the in-
17 stitution pursuant to clause (ii), the
18 Secretary shall make available to the
19 complainant a copy of such revised
20 policy or defense.

21 “(II) RESPONSE BY COMPLAIN-
22 ANT.—Not later than 60 days after
23 the date of receipt of a revised policy
24 or defense of the original policy under
25 subclause (I), the complainant may

1 submit to the Secretary a response to
2 the revised policy or defense of the
3 original policy.

4 “(III) SUBMISSION TO THE IN-
5 STITUTION OF RESPONSE.—Not later
6 than 7 days after the date of receipt
7 of a response under subclause (II),
8 the Secretary shall submit to the in-
9 stitution a copy of such response.

10 “(iv) DETERMINATIONS.—If the insti-
11 tution declines to entirely withdraw the
12 policy that occasioned the complaint and
13 either submits a revised policy for review
14 or submits a defense of the policy that oc-
15 casioned the complaint, the Secretary shall,
16 not later than 60 days after the date of the
17 deadline for a response by the complaint as
18 described in clause (iii)(II), make one of
19 the following determinations:

20 “(I) Determine that the com-
21 plaint in question has insufficient
22 merit to proceed to Second Stage Re-
23 view described in subparagraph (B).

24 “(II) Determine that the com-
25 plaint in question has sufficient merit

1 to proceed to Second Stage Review
2 described in subparagraph (B).

3 “(v) NOTIFICATION.—Not later than
4 7 days after the date the Secretary makes
5 a determination under clause (iv), the Sec-
6 retary shall notify the institution and the
7 complainant of such determination.

8 “(vi) END.—The determination under
9 clause (iv) shall constitute the end of First
10 Stage Review.

11 “(B) SECOND STAGE REVIEW.—

12 “(i) IN GENERAL.—In a Second Stage
13 Review, the Secretary shall notify the insti-
14 tution and the complainant of the com-
15 mencement of the Second Stage Review,
16 and shall give the institution the option of
17 entirely withdrawing the policy that occa-
18 sioned the complaint or submitting a re-
19 vised policy for review within 30 days of
20 the commencement of the Second Stage
21 Review. In such notification submitted to
22 the institution and complainant, the Sec-
23 retary shall indicate the relevant sections
24 of the institution’s policy in question and

1 explain why these sections may be out of
2 compliance.

3 “(ii) DETERMINATION.—Not later
4 than 90 days from the commencement of
5 the Second Stage Review, the Secretary
6 shall determine whether the policy that oc-
7 casioned the complaint, or the revised pol-
8 icy submitted during the First Stage Re-
9 view, or the revised policy submitted within
10 the first 30 days of the Second Stage Re-
11 view, is in violation of student rights under
12 the First Amendment to the Constitution
13 of the United States or of the restrictions
14 on the regulation of speech by time, place,
15 and manner set forth in this section, there-
16 by ending Second Stage Review.

17 “(iii) INVESTIGATION.—During Sec-
18 ond Stage Review, the Secretary may con-
19 duct an investigation in which further in-
20 formation may be sought or requested
21 from the complainant, the institution, or
22 any other pertinent source.

23 “(iv) CERTIFICATION OF WITH-
24 DRAWAL.—At any point during the Second
25 Stage Review, the institution in question

1 may certify to the Secretary that it has en-
2 tirely withdrawn the policy that occasioned
3 the complaint, thereby ending the Second
4 Stage Review.

5 “(v) NOTIFICATION AND JUSTIFICA-
6 TION.—If the Secretary determines by the
7 conclusion of Second Stage Review that
8 the policy that occasioned the complaint or
9 the revised policy submitted for review dur-
10 ing First Stage Review or Second Stage
11 Review is consistent with the expressive
12 rights of students under the First Amend-
13 ment to the Constitution of the United
14 States and the restrictions on the regula-
15 tion of speech by time, place, and manner
16 set forth in this Act—

17 “(I) the Secretary shall notify the
18 complainant and the institution of
19 such determination not more than 7
20 days after the date of the determina-
21 tion; and

22 “(II) the Secretary shall explain
23 and justify such determination in a
24 written decision citing relevant legal
25 precedent, copies of which shall be

1 sent to the complainant, the institu-
2 tion, the authorizing committees, and
3 made available for public inspection,
4 including for online reading by the
5 public.

6 “(C) DETERMINATION THAT INSTITUTION
7 IS OUT OF COMPLIANCE.—

8 “(i) IN GENERAL.—If, upon comple-
9 tion of the Second Stage Review, the Sec-
10 retary determines that the policy that occa-
11 sioned the complaint, or the revised policy
12 submitted for review during the First
13 Stage Review or Second Stage Review, vio-
14 lates the First Amendment to the Con-
15 stitution of the United States or the re-
16 strictions on the regulation of speech set
17 forth in this section, the Secretary shall
18 notify the complainant and the institution
19 not more than 7 days after the date of
20 completion of Second Stage Review that
21 the institution is out of compliance with
22 the requirements for receiving funds under
23 this Act, including participation in any
24 program under this title, but will be grant-
25 ed a grace period of 120 days to return to

1 compliance before being formally stripped
2 of eligibility.

3 “(ii) POSTING; EXPLANATION; FINAL
4 REVIEW.—As part of the notification under
5 clause (i), the Secretary shall—

6 “(I) require the institution to
7 post the determination of the Sec-
8 retary on the website of the institu-
9 tion within 2 clicks of the homepage,
10 without a paywall, email login, or
11 other restriction to access;

12 “(II) explain and justify the de-
13 termination of the Secretary in a writ-
14 ten decision citing relevant legal
15 precedent, copies of which shall be
16 sent to the complainant, the institu-
17 tion, the authorizing committees, and
18 made available for public inspection,
19 including for online reading by the
20 public; and

21 “(III) inform the institution that
22 Final Review has begun and that the
23 institution must either certify to the
24 Secretary that it has entirely with-
25 drawn the policy that occasioned the

1 complaint, or submit a revised policy
2 for review to the Secretary not later
3 than 60 days after the date of receipt
4 of notice of the conclusion of Second
5 Stage Review.

6 “(D) FINAL REVIEW.—

7 “(i) IN GENERAL.—If an institution
8 submits a revised policy for review as de-
9 scribed in subparagraph (C)(ii)(III), the
10 Secretary shall review such revised policy
11 and determine not later than 120 days
12 after the date of commencement of Final
13 Review whether the revised policy is con-
14 sistent with the expressive rights of stu-
15 dents under the First Amendment to the
16 Constitution of the United States and with
17 the restrictions on the regulation of speech
18 by time, place, and manner set forth in
19 this section.

20 “(ii) DETERMINATION OF COMPLI-
21 ANCE.—If the Secretary determines, as de-
22 scribed in clause (i), that the revised policy
23 is consistent with the expressive rights of
24 students under the First Amendment to
25 the Constitution of the United States and

1 with the restrictions on the regulation of
2 speech by time, place, and manner set
3 forth in this section, the Secretary shall
4 notify the complainant and the institution
5 of such determination not more than 7
6 days after the date the determination is
7 made, thereby ending the final Stage Re-
8 view.

9 “(iii) DETERMINATION OF VIOLA-
10 TION.—If the Secretary determines, as de-
11 scribed in clause (i), that the revised policy
12 violates the expressive rights of students
13 under the First Amendment to the Con-
14 stitution of the United States or the re-
15 strictions on the regulation of speech by
16 time, place, and manner set forth in this
17 section, the Secretary shall—

18 “(I) notify the complainant and
19 the institution of such determination
20 not more than 7 days after the date
21 the determination is made, thereby
22 ending the final Stage Review; and

23 “(II) explain and justify the de-
24 termination in a written decision cit-
25 ing relevant legal precedent, copies of

1 which shall be sent to the complain-
2 ant, the institution, and made avail-
3 able for public inspection, including
4 for online reading by the public.

5 “(E) LOSS OF ELIGIBILITY.—

6 “(i) IN GENERAL.—If the Secretary
7 determines, during the Final Stage Review,
8 that the institution’s policy in question vio-
9 lates the expressive rights of students
10 under the First Amendment to the Con-
11 stitution of the United States or the re-
12 strictions on the regulation of speech by
13 time, place, and manner set forth in this
14 section, the Secretary shall—

15 “(I) notify the complainant and
16 the institution not more than 7 days
17 after the date of the determination
18 that the institution will lose eligibility
19 to receive funds under this Act, in-
20 cluding participation in any program
21 under this title, in accordance with
22 this subparagraph;

23 “(II) notify the institution that
24 the loss of eligibility shall take effect
25 beginning with any student notified of

1 acceptance for admission to the insti-
2 tution during the award year subse-
3 quent to the award year during which
4 the determination is made, and that
5 no restoration of eligibility for ineli-
6 gible students in subsequent award
7 years will occur prior to the beginning
8 of the third award year subsequent to
9 the award year during which the de-
10 termination is made;

11 “(III) explain and justify the de-
12 termination in a written decision cit-
13 ing relevant legal precedent, copies of
14 which shall be sent to the complain-
15 ant, the institution, the authorizing
16 committees, and made available for
17 public inspection, including for online
18 reading by the public; and

19 “(IV) require the institution to
20 post the determination of the Sec-
21 retary on the website of the institu-
22 tion, within two clicks of the home-
23 page, without a paywall, email login,
24 or other restriction to access.

1 “(ii) CONTINUED ELIGIBILITY.—Each
2 student enrolled at the institution during
3 the award year in which eligibility is lost
4 as described in this subparagraph, and
5 each student notified of acceptance for ad-
6 mission to the institution during the award
7 year in which eligibility is lost as described
8 in this subparagraph, shall continue to be
9 eligible to participate, through the institu-
10 tion, in programs funded under this Act
11 during the 3-year period after the date of
12 the loss of eligibility.

13 “(F) RESTORATION OF ELIGIBILITY.—

14 “(i) IN GENERAL.—Not later than 7
15 days after the loss of eligibility under sub-
16 paragraph (E), the Secretary shall inform
17 the institution that the institution may re-
18 store eligibility, either by certifying to the
19 Secretary that the institution has entirely
20 withdrawn the policy that precipitated loss
21 of eligibility, or by submitting a revised
22 policy for review at any time following the
23 failure of the Final Review.

24 “(ii) REVIEW OF REVISED POLICY.—

25 The Secretary shall review a revised policy

1 submitted for review after the loss of eligi-
2 bility and determine not later than 120
3 days after the date the revised policy is
4 submitted whether such policy is consistent
5 with the expressive rights of students
6 under the First Amendment to the Con-
7 stitution of the United States and with the
8 restrictions on the regulation of speech by
9 time, place, and manner set forth in this
10 Act.

11 “(iii) INVESTIGATION.—While con-
12 ducting a review to restore eligibility under
13 this subparagraph, the Secretary may con-
14 duct an investigation in which further in-
15 formation may be sought or requested
16 from the institution, or any other source
17 the Secretary determines pertinent.

18 “(iv) WRITTEN DECISION.—In making
19 a determination of whether a revised policy
20 submitted for review after the loss of eligi-
21 bility is either consistent or inconsistent
22 with the expressive rights of students
23 under the First Amendment to the Con-
24 stitution of the United States and with the
25 restrictions on the regulation of speech by

1 time, place, and manner set forth in this
2 Act, the Secretary shall explain and justify
3 the determination in a written decision cit-
4 ing relevant legal precedent, copies of
5 which shall be sent to the complainant, the
6 institution, the authorizing committees,
7 and made available for public inspection,
8 including for online reading by the public.

9 “(v) LIMIT ON REVIEW.—The Sec-
10 retary may conduct not more than 1 review
11 to restore eligibility for a single institution
12 in any given award year.

13 “(vi) RESTORATION.—If an institu-
14 tion certifies to the Secretary that the pol-
15 icy that precipitated the loss of eligibility
16 has been entirely withdrawn, or if Sec-
17 retary determines that the revised policy
18 submitted for review is consistent with the
19 expressive rights of students under the
20 First Amendment to the Constitution of
21 the United States and with the restrictions
22 on the regulation of speech by time, place,
23 and manner set forth in this section, the
24 institution’s eligibility to receive funds
25 under this Act, including participation in

1 any program under this title, shall be re-
2 stored not earlier than the beginning of the
3 third award year following the year in
4 which notification of loss of eligibility was
5 received.

6 “(G) GOOD FAITH REPRESENTATION.—

7 “(i) IN GENERAL.—The Secretary
8 shall inform any institution undergoing re-
9 view of its campus speech policies that it
10 expects the institution to represent its poli-
11 cies, along with any proposed revisions in
12 such policies, in good faith.

13 “(ii) MISREPRESENTATION.—

14 “(I) COMPLAINTS.—A student,
15 student organization, or any other
16 person or organization may file, with
17 the employee in the Office of Postsec-
18 ondary Education of the Department
19 designated by the Secretary under
20 paragraph (2) to receive complaints, a
21 complaint that an institution has sub-
22 stantially misrepresented its speech
23 policies, or withheld information re-
24 quested by the Secretary during an
25 investigation, or attempted to cir-

1 cumvent the review process by reinsti-
2 tuting a policy under review in a sub-
3 stantially similar form without inform-
4 ing the Secretary.

5 “(II) LOSS OF ELIGIBILITY.—If
6 the Secretary determines upon inves-
7 tigation, or after receiving a complaint
8 under subclause (I), that an institu-
9 tion has substantially misrepresented
10 its speech policies, or withheld infor-
11 mation requested by the Secretary
12 during an investigation, or attempted
13 to circumvent the review process by
14 reinstating a policy under review in
15 a substantially similar form without
16 informing the Secretary, the institu-
17 tion shall lose eligibility to receive
18 funds under this Act, including par-
19 ticipation in any program under this
20 title.

21 “(iii) LOSS OF ELIGIBILITY.—If an in-
22 stitution loses eligibility under clause (ii),
23 the Secretary shall notify the institution,
24 not later than 7 days after the determina-
25 tion, that the loss of eligibility shall take

1 effect beginning with any student notified
2 of acceptance for admission to the institu-
3 tion during the award year subsequent to
4 the award year during which the deter-
5 mination is made, and that no restoration
6 of eligibility for students admitted in sub-
7 sequent award years will occur prior to the
8 beginning of the third award year subse-
9 quent to the award year during which the
10 determination is made.

11 “(f) RETALIATION PROHIBITED.—

12 “(1) IN GENERAL.—No person may intimidate,
13 threaten, coerce, or discriminate against any indi-
14 vidual because the individual has made a report or
15 complaint, testified, assisted, or participated or re-
16 fused to participate in any manner in an investiga-
17 tion, proceeding, or hearing under this section.

18 “(2) SPECIFIC CIRCUMSTANCES.—

19 “(A) EXERCISE OF FIRST AMENDMENT
20 RIGHTS.—The exercise of rights protected
21 under the First Amendment to the Constitution
22 of the United States does not constitute retalia-
23 tion prohibited under paragraph (1).

24 “(B) CODE OF CONDUCT VIOLATION FOR
25 MATERIALLY FALSE STATEMENT.—Charging an

1 individual with a code of conduct violation for
2 making a materially false statement in bad
3 faith in the course of a grievance proceeding
4 under this section does not constitute retalia-
5 tion prohibited under paragraph (1). A deter-
6 mination regarding responsibility, alone, is not
7 sufficient to conclude that any party made a
8 materially false statement in bad faith.

9 “(g) JUDICIAL REVIEW.—A public institution of
10 higher education participating in a program under this
11 title may seek judicial review of an agency action under
12 this section in accordance with chapter 7 of title 5, United
13 States Code.

14 **“SEC. 494B. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**
15 **VERSITIES.**

16 “(a) IN GENERAL.—Each private institution of high-
17 er education eligible to receive funds under this Act, in-
18 cluding any program under this title, shall—

19 “(1) post in one place on the website of the in-
20 stitution all policies that pertain to the protection
21 and regulation of the expressive rights of students,
22 including the right to submit a complaint under this
23 section, within 2 clicks of the homepage, without a
24 paywall, email login, or other restriction to access;
25 and

1 “(2) include a copy of such policies in a hand-
2 book distributed to new students.

3 “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-
4 SURE.—Each private institution of higher education de-
5 scribed in subsection (a) shall include with the copy of the
6 policies described in subsection (a)—

7 “(1) a statement affirming that all policies per-
8 tinent to the protection and regulation of the expres-
9 sive rights of students have been disclosed in the
10 manner required by this section; and

11 “(2) a statement affirming that publication of
12 such policies as required by this section and instruc-
13 tions for students on how to contact the employee
14 designated in the Office of Postsecondary Education
15 in the Department under subsection (d)(1) to file a
16 complaint.

17 “(c) CAUSE OF ACTION.—

18 “(1) AUTHORIZATION.—A student claiming
19 that a private institution of higher education in
20 which the student is enrolled has violated published
21 policy regarding expressive rights imposed by this
22 section may bring an action in a Federal court of
23 competent jurisdiction to enjoin such violation or to
24 recover compensatory damages, reasonable court
25 costs, or reasonable attorney fees.

1 “(2) ACTIONS.—Notwithstanding any other
2 provision of law, in an action brought under this
3 subsection, the Federal court shall decide de novo all
4 relevant questions of fact and law, including the in-
5 terpretation of constitutional, statutory, and regu-
6 latory provisions, unless the parties stipulate other-
7 wise. In an action brought under this subsection, if
8 the court finds a violation of subsection (b), the
9 court—

10 “(A) shall—

11 “(i) enjoin the violation; and

12 “(ii) award the student—

13 “(I) not less than \$500 for an
14 initial violation; and

15 “(II) if the student notifies the
16 institution of the violation, \$50 for
17 each day the violation continues after
18 the notification if the institution did
19 not act to discontinue the cause of the
20 violation; and

21 “(B) may award a prevailing plaintiff—

22 “(i) compensatory damages;

23 “(ii) reasonable court costs; or

24 “(iii) reasonable attorney fees.

25 “(d) SECRETARIAL REQUIREMENTS.—

1 “(1) DESIGNATION OF AN EMPLOYEE.—The
2 Secretary shall designate an employee in the Office
3 of Postsecondary Education in the Department who
4 shall—

5 “(A) receive copies of all complaints per-
6 taining to the protection and regulation of the
7 expressive rights of students at private institu-
8 tions of higher education that receive funds
9 under this section, including any programs
10 under this title;

11 “(B) preserve all records of such policies
12 for a period of not less than 10 years;

13 “(C) receive complaints from students, stu-
14 dent organizations, or from any other person or
15 organization, that believes a private institution
16 of higher education has not disclosed a policy
17 pertaining to the protection and regulation of
18 the expressive rights of students as required by
19 this section, is enforcing a policy pertaining to
20 the expressive rights of students that has not
21 been disclosed as required by this section, or
22 has failed to make a full policy disclosure, for
23 the enforcement of speech policies, as required
24 by this section;

1 “(D) not more than 7 days after the date
2 of receipt of a complaint under subparagraph
3 (C), review the complaint and request a re-
4 sponse from the institution;

5 “(E) undertake an investigation, in re-
6 sponse to a complaint under subparagraph (C),
7 to determine whether a private institution of
8 higher education has failed to disclose a policy
9 pertaining to the protection and regulation of
10 the expressive rights of students as required by
11 this section or is enforcing a policy pertaining
12 to the expressive rights of students that has not
13 been disclosed as required by this section; and

14 “(F) determine, not later than 120 days
15 after the date of receipt of a complaint, whether
16 the private institution of higher education in
17 question has failed to disclose a policy per-
18 taining to the protection and regulation of the
19 expressive rights of students as required by this
20 section or is enforcing a policy pertaining to the
21 expressive rights of students that has not been
22 disclosed as required by this section.

23 “(2) LOSS OF ELIGIBILITY.—

24 “(A) IN GENERAL.—If the Secretary deter-
25 mines that a private institution of higher edu-

1 cation has failed to disclose a policy pertaining
2 to the protection and regulation of the expres-
3 sive rights of students as required by this sec-
4 tion or is enforcing a policy pertaining to the
5 expressive rights of students that has not been
6 disclosed as required by this section, the Sec-
7 retary shall notify the institution and the com-
8 plainant, not more than 7 days after the date
9 of such determination, that the institution is
10 out of compliance with the requirements for re-
11 ceiving funds under this Act, including partici-
12 pation in any program under this title, but will
13 be granted a grace period of 60 days to return
14 to compliance before formally losing eligibility
15 for receiving funds under this Act, including
16 participation in any program under this title.

17 “(B) SPECIFICATIONS IN NOTIFICATION.—
18 As part of the notification under subparagraph
19 (A), the Secretary shall specify which policies
20 need to be disclosed and published in order for
21 eligibility to be restored.

22 “(C) NOTIFICATION OF LOSS OF ELIGI-
23 BILITY.—

24 “(i) IN GENERAL.—If the Secretary
25 determines that, 60 days after being noti-

1 fied that the institution is out of compli-
2 ance as described in subparagraph (A), the
3 institution has failed to return to compli-
4 ance by making the appropriate speech
5 policy disclosures, the Secretary shall no-
6 tify the institution and the complainant,
7 not more than 7 days after the date of
8 such determination—

9 “(I) that the institution will lose
10 eligibility to receive funds under this
11 Act, including participation in any
12 program under this title;

13 “(II) that the loss of eligibility
14 shall take effect beginning with any
15 student notified of acceptance for ad-
16 mission to the institution during the
17 award year subsequent to the award
18 year during which the determination
19 is made, and that no restoration of
20 eligibility for ineligible students in
21 subsequent years will occur prior to
22 the beginning of the third award year
23 subsequent to the award year during
24 which the determination is made; and

1 “(III) that the institution shall
2 post the determination of the Sec-
3 retary on the website of the institu-
4 tion, within two clicks of the home-
5 page, without a paywall, email login,
6 or other restriction to access.

7 “(ii) CONTINUED ELIGIBILITY.—Each
8 student enrolled at the institution during
9 the award year in which eligibility is lost
10 as described in this subparagraph, and
11 each student notified of acceptance for ad-
12 mission to the institution during the award
13 year in which eligibility is lost as described
14 in this subparagraph, shall continue to be
15 eligible to participate, through the institu-
16 tion, in programs funded under this Act
17 during the 3-year period after the date of
18 the loss of eligibility.

19 “(3) RESTORATION OF ELIGIBILITY.—

20 “(A) IN GENERAL.—Not later than 7 days
21 after the loss of eligibility under paragraph (2),
22 the Secretary shall inform the institution that
23 the institution may restore eligibility by making
24 the appropriate speech policy disclosures, as di-

1 rected by the Secretary in conformity with this
2 section.

3 “(B) REVIEW.—The Secretary shall review
4 any policy disclosures and determine whether
5 the policy disclosures are sufficient to restore
6 eligibility for receiving funds under this Act, in-
7 cluding participation in any program under this
8 title, not later than 120 days after the date of
9 receipt of such disclosures or statement.

10 “(C) INVESTIGATION.—While conducting a
11 review to restore eligibility under this para-
12 graph, the Secretary may conduct an investiga-
13 tion in which further information may be
14 sought or requested from the institution, or
15 other source pertinent to the case.

16 “(D) RESTORATION.—If the Secretary de-
17 termines that the institution under review to re-
18 store eligibility under this paragraph has made
19 the policy disclosures as required by this sec-
20 tion, the institution’s eligibility to receive funds
21 under this Act, including participation in any
22 program under this title, shall be restored not
23 earlier than the beginning of the third award
24 year following the year in which notification of
25 loss of eligibility was received.

1 “(E) LIMIT ON REVIEW.—The Secretary
2 may conduct not more than 1 review to restore
3 eligibility for a single institution in any given
4 award year.

5 “(4) PROHIBITION.—The Secretary may not
6 conduct an investigation under this subsection for
7 purposes of making a determination under para-
8 graph (2)(A) with respect to an institution of higher
9 education, unless such an investigation is conducted
10 with respect to a complaint received under para-
11 graph (1).

12 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—
13 This section shall not apply to an institution of higher
14 education that is controlled by a religious organization.

15 “(f) JUDICIAL REVIEW.—A private institution of
16 higher education participating in a program under this
17 title may seek judicial review of an agency action under
18 this section in accordance with chapter 7 of title 5, United
19 States Code.”.